

*Application No. : 10/759,136*  
*Art Unit : 3654*

*Attorney Docket No. 23844.00*  
*Confirmation No. 6966*

**REMARKS**

By the present amendment, Applicant has canceled Claims 1-7 and added Claims 8-14, which remain pending in the present application. Claim 8 is the sole independent claim.

In the Office Action mailed November 7, 2005, the Examiner rejected Claims 1, 2 and 6 under 35 U.S.C. § 102(b) as being anticipated by Matsumoto (US 4,198,720). Claims 1, 4 and 5 were rejected under 35 U.S.C. § 102(b) as being anticipated by Mitchell (US 5,738,399). Claim 3 was rejected by the Examiner as being unpatentable over Matsumoto in view of Vosbikian (US 5,425,153), and Claim 7 was rejected as being unpatentable over Matsumoto.

Claims 1-7 have been canceled and new Claims 8-14 have been introduced to more particularly define the subject matter in question. Applicant will advance arguments hereinbelow to illustrate the manner in which the invention defined by the newly introduced claims is patentably distinguishable from the cited and applied prior art. Reconsideration of the present application is respectfully requested.

New independent Claim 8 is directed to a concrete coloring tool for evenly distributing coloring powder onto concrete, wherein the tool includes a substantially rectangular perforated base

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and surrounding frame. The base is defined as being formed of a flat, uniformly perforated sheet material and having a plurality of holes dimensioned to allow an optimum amount of coloring powder to sift through at a controllable rate. The frame is defined as being attached about the periphery of the perforated base, and further characterized as having four solidly formed walls extending upwardly from the base to define an enclosure dimensioned to prevent spillage during sifting of the coloring powder. The claimed tool further includes an adjustable handle pivotally attached to and extending from one of the walls of the frame. New dependent Claim 9 further defines the specific size of each hole in the perforated base. New Claims 10 and 11 respectively set forth the particular material out of which the base and frame are made. New Claims 12, 13 and 14 further limit features of the claimed tool and particularly claim means for attaching the handle to the frame, the configuration of frame, and the functional aspect of the handle's hollow end, respectively. Newly introduced Claims 8-14 are drawn to preferred embodiments of Applicant's invention. No new matter is involved by the language set forth by the newly presented claims since the same find clear support in the written description of the original disclosure.

Applicant contends that the Matsumoto and Mitchell references, taken alone or in combination, or combined with any of the prior art references cited of record, fail to describe or reasonably suggest a "concrete coloring tool" having the combination of structural and functional features as defined by the present claims.

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In contrast, the patent to Matsumoto discloses a tool for removing dirt from a water tank that includes a rectangular frame 4 formed by bending a strip of metal to form a rear member 6 and lateral members 7, 8 and connecting a frontal member 9 to the lateral members. A net 5 is loosely hung from the frame such that the middle section of the net sags down from the frame to form a scooping portion. Attached to the frontal member 9 is a sliding piece 3 and a handle 1 is affixed to rear member 6. Clearly, Matsumoto's dirt remover is structurally and functionally unrelated to Applicant's claimed concrete coloring tool.

Likewise, the cat litter scoop taught by the patent to Mitchell bears no semblance to Applicant's claimed invention. Mitchell's scoop includes a base 2 having a bottom 8, a rear 9 and sides 7, wherein a portion of the bottom and sides is formed of a mesh material. A handle 3 is angularly affixed to the rear 9 and the front portion of the base is substantially open to facilitate the scooping of cat litter. There can be no question that the cat litter scoop realistically taught by Mitchell is structurally and functionally distinct from Applicant's claimed concrete coloring tool..

In order to show anticipation under 35 U.S.C. 102, the reference must show every element of the claimed invention identically. *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1 USPQ2d 1081 (Fed. Cir. 1986), *Akzo N.V. v. United States Intl. Trade Commission*, 808 F.2d 1471, 1 USPQ2d 1241 (Fed. Cir. 1986). Not only must every element claimed be shown in the

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prior art reference, but every claimed limitation of each of the elements must be shown; otherwise, the only possible rejection is for obviousness under 35 U.S.C. 103. *Atlas Powder Co. v. E.I. du Pont de Nemours & Co.*, 750 F.2d 1569, 224 USPQ 409 (Fed. Cir. 1984), *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985).

Applicant contends that the Matsumoto and Mitchell patents are deficient as anticipatory references against the present claims since these references fail to disclose the essential structural and functional features of Applicant's tool that form the basis of the present claims. Further, it is Applicant's contention that the references to Matsumoto and Mitchell, taken alone or in combination, are insufficient to render the presently claimed invention obvious within the meaning of 35 U.S.C. 103 since this reference fails to reasonably suggest Applicant's presently claimed invention. The secondary reference to Vosbikian has been duly considered, but fails to supplement the apparent deficiencies of either Matsumoto or Mitchell.

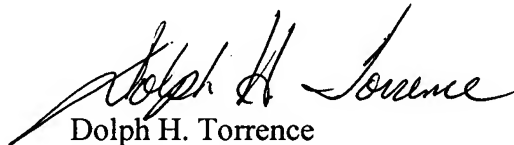
Applicant contends that one skilled in the art without the benefit of Applicant's own disclosure would not be capable of arriving at the presently claimed invention since none of references cited or applied of record fail to disclose or realistically suggests the essential combination of structural and functional features that forms the basis of the instant claims. For at least these reasons, Applicant respectfully submits that newly presented independent Claim 8 and corresponding new dependent Claims 9-14 are allowable over the prior art of record.

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For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,



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Attachments: Petition to Revive Abandoned Application  
Request for Continued Examination (RCE)  
Checks in the Amounts of \$750.00 and \$395.00